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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Victor David Perez Peralta,

10 Plaintiff,

11 v.

12 Custom Image Pros LLC, et al.,

13 Defendants.
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No. CV-23-00358-PHX-JAT

ORDER

15 Plaintiff moved for default judgment in this case. (Doc. 11). The Court granted that
16 motion (Doc. 12) and judgment has been entered (Doc. 13). Plaintiff now moves to amend
17 the complaint.

18 Once final judgment has entered, it can only be vacated, corrected, or set aside in
19 very limited circumstances. *See, e.g.*, Fed. R. Civ. P. 60. The Court finds Plaintiff has not
20 argued, legally or factually, any reason to set aside the judgment.

21 Thus, the Court is without authority to authorize an amended complaint in this
22 closed case. *See Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996) (“[A]fter final
23 judgment has been entered, a Rule 15(a) motion may be considered only if the judgment is
24 first reopened under Rule 59 or 60.”). Moreover, even if all necessary procedural steps
25 were followed to set aside the judgment, and Plaintiff could then show that a motion to
26 amend the complaint should be granted, Plaintiff’s further request that the Court not vacate
27 the entry of default based on a former version of the complaint would be denied.

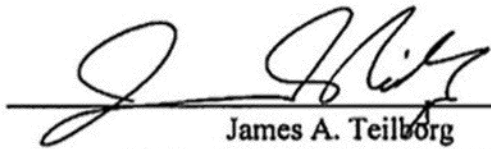
28 If Plaintiff seeks entry of default, it must be on the operative complaint

1 notwithstanding that the Court in *Aguirre v. Custom Image Pros LLC*, CV-419-PHX-ROS,
 2 Doc. 13 (D. Ariz. Oct. 13, 2023) allowed otherwise without authority.¹ Indeed, while it is
 3 not this Court's concern, the Court is skeptical that the judgment in *Aguirre* is enforceable.
 4 And because Plaintiff intends to seek default against a "new" party, service of the amended
 5 complaint would also be required.

6 Based on the foregoing,

7 **IT IS ORDERED** that Plaintiff's motion to amend (Doc. 14) is denied in its entirety
 8 including the motion for extension of time to file a fee request.

9 Dated this 19th day of December, 2023.

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 14 James A. Teilborg
 15 Senior United States District Judge

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1 If the clerk enters default and the plaintiff later files an amended complaint,
 the default based on the original complaint is void. *Rhodes v. Robinson*, 621
 F.3d 1002, 1005 (9th Cir. 2010) ("As a general rule, when a plaintiff files an
 amended complaint, the amended complaint supercedes the original, the
 latter being treated thereafter as non-existent."); *Vanguard Fin. Serv. Corp.*
v. Johnson, 736 F. Supp. 832, 835 (N.D. Ill. 1990) (striking as moot the
 plaintiff's motion for default judgment after granting the plaintiff leave to file
 an amended complaint); *Nelson v. Nationwide Mortg. Corp.*, 659 F. Supp.
 611, 615 (D. D.C. 1987) ("In light of [the plaintiff's] filing of an amended
 complaint, her motions for entry of default judgments against [the
 defendants] must be denied as moot."); *ThermoLife Int'l, LLC v. Sechel*
Holdings, Inc., 2015 WL 1521779, at *1 (D. Ariz. Apr. 3, 2015) ("Because
 Plaintiff's original complaint no longer performs any function, a default
 based on the original complaint must also be rendered ineffectual and non-
 existent." (internal quotations omitted)); *Best W. Int'l, Inc. v. Melbourne*
Hotel Inv'rs, LLC, 2007 WL 2990132, at *1 (D. Ariz. Oct. 11, 2007) ... ("The
 significance of the filing of the Amended Complaint for purposes of
 Plaintiff's original motion for default judgment is that it mooted the
 request.")....

United States v. Proceeds from the Sale of a Condo. Located at the Ritz Carlton in
Los Angeles, California, No. SACV151110JVSDFMX, 2016 WL 11772212, at *1
 (C.D. Cal. Aug. 5, 2016)